

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

4400 BROAD RIVER ROAD
COLUMBIA, SOUTH CAROLINA 29210

POLICY #: 8.12.26	DATE: 09/01/93	REVISION DATE:
TITLE: IMPLIED CONSENT - BAC DATAMASTER REFUSALS		PAGE 1 OF 2
RESPONSIBLE AUTHORITY: SPECIAL AGENT IN CHARGE OF FORENSIC SERVICES LABORATORY		
RELATED STANDARDS/STATUTES/REFERENCES: <u>S.C. Code of Laws</u> , Section 56-5-2950 <u>S.C. Code of Laws</u> , Section 50-21-114 <u>S.C. Code of Laws</u> , Section 55-1-100 <u>S.C. Code of Laws</u> , Section 56-1-2130		

GENERAL PURPOSE: To set forth policies for the administration of implied consent breath alcohol tests.

POLICY: The Division will establish procedures for properly conducting implied consent BAC DataMaster breath alcohol tests.

SPECIFIC PROCEDURES: A refusal to submit to a breath test can occur in any of the following ways:

- (1) The subject expresses a refusal to take the test after being advised of his/her Implied Consent Rights.
- (2) The subject acts unruly and/or violent while the test is being administered. This includes the entire process from the time the subject comes in contact with the operator till the test is complete.
- (3) The subject delays the administration of the test. The test operator is not required to wait until an attorney or other individual shows up on the subject's behalf.
- (4) The subject refuses to cooperate or interferes with the administration of the test.
- (5) The subject does not cooperate in the checking of his/her mouth. This includes, but is not limited to, failure to open mouth, failure to accurately answer questions about foreign material and/or dental work, and failure to remove foreign material and/or removable dental work.
- (6) The subject ingests prohibited substances during the observation period. This includes smoking during the observation period.
- (7) The subject intentionally regurgitates or refuses to rinse out his/her mouth after unintentional regurgitation.
- (8) The subject refuses to answer or incorrectly answers biographical information required by the operator. The operator, may at his/her discretion, test a subject without complete biographical information, as long as the operator has sufficient information to identify the subject.
- (9) The subject does not attempt to blow, pretends to blow, or does not blow an adequate sample, as determined by the instrument. Any subject will be able to provide an adequate sample, as determined by the instrument.
- (10) The subject intentionally causes the instrument to have an error and/or failure.

Note: An "INVALID SAMPLE", "DETECTOR OVERFLOW", or "INTERFERENCE DETECTED" reading, by itself, is not a refusal situation. However, since these readings are not completed tests, the subject can still be required to provide another sample, and a refusal situation could occur. Unless unusual circumstances exist (such as the subject becoming unruly and/or violent), a refusal should not be issued after the subject's "INVALID SAMPLE" or "DETECTOR OVERFLOW" reading unless the correct procedure is followed and the subject is given another chance to provide a sample and fails to do so. Additionally, if a status/error code and/or failure (before, during, or after "PLEASE BLOW") aborts the test, the subject can still be required to provide another sample, and a refusal situation could occur.

A subject may be removed from the testing location at any time after a refusal occurs. If a subject gives the test operator a refusal after being advised of his/her Implied Consent Rights, the checking of the mouth and/or the observation period may be waived. In the event of a refusal during the observation period, this observation period may be terminated whether or not the evidence ticket has been time stamped. The operator may write "Subject refused" or similar wording, date and time along with the operator's initials on the evidence ticket. It is not required that the operator write these words since the instrument will print "REFUSED" by the subject sample after the two minutes has elapsed and the operator has answered that the subject has refused the test. Regardless of the type of refusal, the operator will proceed with the applicable test sequence procedures on the BAC DataMaster. Unless unusual circumstances exist, all refusals must be entered into the BAC DataMaster to constitute a valid refusal. This is done solely for documentary and statistical purposes, not to check the instrument.